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DE RUEHSN #1013/01 1101355  
ZNR UUUUU ZZH  
P 201355Z APR 06  
FM AMEMBASSY SAN SALVADOR  
TO RUEHC/SECSTATE WASHDC PRIORITY 2000  
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY  
RUEHC/DEPT OF LABOR WASHINGTON DC PRIORITY

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STATE/DRL FOR GABRIELLA RIGG

E.O. 12958: N/A  
TAGS: [ELAB](#) [ES](#) [ETRD](#) [PGOV](#)  
SUBJECT: EL SALVADOR: HERMOSA MANUFACTURING CASE REMAINS  
IN GRIDLOCK

¶1. This is an action request; see para. 7.

¶2. (SBU) SUMMARY: Hermosa Manufacturing Co., a Salvadoran owned and operated apparel manufacturer, ceased operations in May 2005, leaving more than 250 workers jobless and liabilities of USD 825,000 in outstanding wages, severance payments, and unpaid benefits. Hermosa was a sewing subcontractor to an Adidas-Salomon supplier from 2000 until mid-2002. Although the factory's remaining assets appear to be sufficient to satisfy both the workers, claims and bank liens, there has been no progress in resolving the issue, despite the good faith efforts of Adidas-Salomon in assisting workers in seeking a solution with the Salvadoran Presidential Commissioner for Governance. More Salvadoran inter-agency coordination to solve labor problems is necessary because these problems may undermine the investment environment in El Salvador, particularly within the context of CAFTA-DR. END SUMMARY.

¶3. (SBU) Owner and General Manager Salvador Montalvo opened Hermosa Manufacturing Co. in 1992, located in a bonded warehouse (DPA) in Apopa, North of San Salvador. At its peak, Hermosa employed some 600 workers, and assembled 12,000 clothing items per day. It worked as a subcontractor to other Salvadoran companies working for prestigious brands such as Adidas, Nike and Puma. Citing problems relating to contractual matters such as quality and delivery times, Adidas withdrew from its contractual relationship with Hermosa in the middle of 2002. The factory shut down operations in May 2005, citing lack of raw material; 254 workers have yet to be paid USD 825,000 in back wages, severance payments, and other benefits. Banco Cuscatlan and Banco de America Central hold liens of approximately USD 1 million, but the factory's remaining assets of approximately USD 2 million appear sufficient to satisfy both workers, claims and bank liabilities. However, neither the Ministry of Labor (MOL) nor the Solicitor's Office (PGR) enforced Article 38, Section four of the Constitution, which specifies that workers' compensation takes precedence over competing claims, liens and liabilities. In meetings with Adidas-Salomon and worker representatives, owner/manager Montalvo communicated his desire to resolve the matter, but failed to follow through with good-faith efforts to pay workers. On many occasions, Montalvo's attorney Oscar Armando Mena appeared reluctant to look for possible solutions, but did ask the Ministry of Labor to release Montalvo from the travel restrictions placed on him due to non-payment of social benefits to workers.

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CURRENT STATUS  
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14. (SBU) Although not legally liable in any way to its former client Hermosa, according to Salvadoran law Adidas-Salomon has had numerous meetings with the Minister and Vice Minister of Labor, Minister of Economy, Montalvo,s attorney, and the workers, attorney. However, the involvement of the Presidential Commissioner for Democratic Government was necessary to set up a temporary settlement for former Hermosa workers. Gloria Salguero Gross, the Presidential Commissioner for Democratic Government, arranged a meeting with the Presidential Technical Advisor, the Presidential Legal Advisor, the Minister and Vice Minister of Labor and the Minister and Vice Minister of Economy on April 4th. At this meeting, the government stated that they could not pay Hermosa workers for unpaid compensation using public funds, but would continue to expedite several legal proceedings for the Hermosa case. Currently, the labor tribunal is considering 73 workers, cases; approximately 30 cases have been ruled in favor of the workers (Hermosa,s owner has appealed 17 of those cases) but because of the lack of enforcement of the above-mentioned constitutional provision, there are not assets available to pay the compensation awards.

15. (SBU) The Salvadoran Government agreed to offer former Hermosa workers two types of medical coverage: basic medial coverage through the Ministry of Health (Unidades de Salud) and additional coverage for serious medical illness through the Salvadoran Institute of Social Security. Coverage will be available for one year or until re-employment. The MOL will send written notifications to former Hermosa workers this week. Additionally, to address the allegations of blacklisting, the government has scheduled a job fair in a central exhibition hall in San Salvador for May 12-13, and will ensure that unemployed Hermosa workers are given priority for interviews and employment opportunities during this event.

16. (SBU) The Ministry of Labor asserted it is in the process of hiring 69 new labor inspectors, effectively doubling the labor inspectorate, and the government agreed to send the new inspectors to external training in the Guidelines of Best Employment Practices, as the Guatemalans did in late 2005.

17. (SBU) ACTION REQUEST: Post requests that the Departments of Labor and State representatives to the Central American and Dominican Republic Labor Ministerial Conference to be held in Guatemala City meet and discuss the Hermosa case with Salvadoran Minister of Labor Roberto Espinal. Espinal has agreed to meet with DOL and State representatives at 8:00am on April 21st. Post suggests the following questions as helpful to clarify a solution to this case.

- We are particularly interested in knowing the Salvadoran Government,s plan to enforce the constitutional right of precedence (Article 38, Section 4 of the Constitution) for payment of back wages and benefits to workers in the Hermosa case.
- If the Salvadoran Government is not going to enforce the right of precedence, can it explain its reasons for not doing so?
- What is the current status of legal proceedings against the owner Salvador Montalvo Machado?
- We know the cases of 73 workers have been brought before the Labor Tribunal, but there were more than 200 workers at Hermosa. What is the status of the other workers and their claims?
- CAFTA-DR entered into force for El Salvador on March 1st, and Article 16.1 states that parties to the agreement will reaffirm their obligations as members of the ILO, as well as their own Constitutions. How is El Salvador putting this provision into practice?

18. (SBU) COMMENT: Although the Salvadoran Constitution codifies the protection of workers, there is a lack of enforcement that undermines El Salvador,s credibility in adequately protecting workers, rights. With CAFTA-DR in

force as of March 1 for El Salvador, an unresolved Hermosa case could establish a bad precedent for Salvadoran labor authorities, and damage the investment climate. The brands involved have done a lot of good faith work to bring the case to conclusion without resorting to the courts, but to date have failed. This type of negotiation between buyers, producers and workers can be extremely useful and under CAFTA-DR several projects have been proposed to create mechanisms for alternative dispute resolutions. However, the Salvadoran business community and the government need to work together to address these kinds of problems before they reach the status of the Hermosa case.

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<http://www.state.sgov.gov/p/wha/sansalvador/index.cfm>  
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